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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,441	08/16/2001	Sang Sun Lee	HI-0042	1268
34610 7590 05/15/2007 KED & ASSOCIATES, LLP P.O. Box 221200 Chantilly, VA 20153-1200			EXAMINER NGUYEN BA, HOANG VU A	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 05/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/930,441

Applicant(s)

LEE, SANG SUN

Examiner

Hoang-Vu A. Nguyen-Ba

Art Unit

2623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-3, 5-13 and 15-18.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.



ANTONY NGUYEN-BA  
PRIMARY EXAMINER

Hoang-Vu Antony Nguyen-Ba  
Primary Examiner  
Art Unit: 2623

Continuation of 13. Other: See following note for an explanation of how the amended claims would be rejected.

**Applicant's argument:**

Bayrakeri does not teach or suggest all the features of independent claim 1; more specifically, Bayrakeri does not teach or suggest the claimed displaying a menu on a TV and transmitting environmental information selected by the user using the displayed menu, as recited in independent claim 1. Rather, Bayrakeri discloses a head end 102 (FIG. 1) that contains a program guide wherein the program guide is not inputted or stored by the user. And rather, the user merely manipulates the user interface of the program guide.

**Examiner's response:**

The Office action of 7/13/06 has indicated that Bayrakeri fails to teach "displaying a menu on the television in response to a viewer's request for an environment setting." However, Wehmeyer does teach that the step of outputting the initial menu in response to the viewer's request of environment setting from the television before the step of transmitting to the server at 1:32-37; 7:61-67.

As for the step of transmitting environmental information selected by the user using displayed menu, see Office action of 7/13/06 p. 3, last paragraph and p. 4, first paragraph.

**Applicant's argument:**

The Office action (on page 2) states that Bayrakeri does not teach the environmental information adjustment relating to broadcasting information settings. The Office action then asserts that Lawler's col. 13, lines 18-23 teaches these missing features... Lawler's polling of a headend does not suggest all the claimed features.

**Examiner's response:**

It is respectfully noted that the Office action, at p. 5, lines 1-4, states "[i]n an analogous art Lawler teaches environmental information adjustments related to broadcast reservation settings (13:18-23 teaches the head end storing a broadcast reservation setting which is a type of program guide data since a program guide is used to set up the reservation setting; and FIG. 5). The claimed "broadcast information settings" is interpreted to mean Lawler's broadcast reservation settings.

**Applicant's argument:**

Furthermore, Lawyer's col. 13, lines 18-23 does not teach or suggest a selection (i.e., selected) by a viewer using a displayed menu. In summary, Lawler's 13:18-23 does not correspond to transmitting environmental information to the server from the television, where the environmental information comprises information relating to (channel settings,) broadcast reservations (and screen color settings)... Lawler's mere polling of whether a program has been set does not correspond to transmitting environmental information where the environmental information comprises information relating (channel settings,) broadcast reservation settings (and screen color settings) as recited in independent claim 1.

**Examiner's response:**

See Office action of 7/13/06 p. 3, last paragraph & p. 4, first paragraph.

**Applicant's argument:**

There is no suggestion of how Lawler's polling may be combined with Bayrakeri's rendering of a custom IPG. This combination does not suggest the claimed features.

**Examiner's response:**

see motivational statement at p. 5, 2<sup>nd</sup> paragraph.

**Applicant's argument:**

Applicant respectfully submits that the applied references, as a whole, do not teach or suggest transmitting environmental information selected by the viewer using the displayed menu, where the environmental information comprises information relating to channel settings, broadcast reservation settings and screen color settings. The Office Action's attempt to combine references to find the claimed environmental information is based on impermissible hindsight.

**Examiner's response:**

As for the step of transmitting the environmental information, see above response. As for the environmental information comprising information relating to channel settings, see OA of 7/13/06, p. 4, 4<sup>th</sup> paragraph. As for the environmental information relating to broadcast reservation settings, see OA of 7/13/06, p. 5, first paragraph. As for environmental information relating to color settings, see OA of 7/13/06, p. 5, paragraphs 4-5.

As for Applicant's argument of impermissible hindsight, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

**Applicant's argument:**

Merely because Bayrakeri discloses channel settings, there is no suggestion for the other features of independent claim 1 or the combination with other features so as to include transmitting environmental information from a server to the television where the environment information comprises information relating to channel settings (broadcast reservation settings and screen color settings).

**Examiner's response:**

In addition to the response set forth above, it is respectfully noted that in an interactive television program guide such as the one by Bayrakeri, the environmental information is deemed inherent to this environment since the custom-IPG (see Abstract).

Applicant's argument:

Applicant respectfully submits that the OA relies on impermissible hindsight in order to combine various references so as to find the respective features.

Examiner's response:

see above.

Applicant's argument:

Wehmeyer in combination with Bayrakeri (and other applied references) do not suggest displaying a menu and transmitting environmental information selected by the viewer using the displayed initial menu.

Examiner's response:

see first examiner's response above.

Applicant's argument:

The September 13, OA states that Bayrakeri fails to disclose that environmental information is inquired based on an ID number of a viewer. The OA then cites Dunn's 6:64 - 7:4 and 8:24-44. However, the cited section does not relate to the missing feature of transmitting environmental information selected by the viewer using the displayed menu along with a viewer's ID number. The mere identification of a viewer does not suggest the missing claimed features.

Examiner's response:

As previously discussed in the previous OA, since Applicant's disclosure fails to specifically define the "viewer's ID number" the OA interprets the claimed viewer's ID number as the set top box ID number.

Applicant's argument:

The September 13 OA (on page 4) states that Bayrakeri's col. 25, lines 1-13 teaches the claimed transmitting a download request of environmental information. However, the cited section merely relates to delivery of a custom-IPG from the head end to the STT. This does not correspond to transmitting a download request of environmental information, where the environmental information relates to channel settings, broadcast reservation settings and screen color settings, as recited in independent claim 1.

Examiner's response:

It is noted that the download request of environmental settings is deemed inherent to the custom-IPG (see OA of 7/13/06 and Abstract).

With respect to amended Claim 8, 11, 16, since these claims recite similar features of claim 1, the above response also applies to these claims.

With respect to Claim 10, see OA of 7/13/06.

With respect to Claim 18, see OA of 7/13/06.